

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application A031932

Martin Schepergerdes

ORDER CANCELING WATER RIGHT APPLICATION

SOURCE: Unnamed Spring tributary to Bear Creek thence the South Fork Eel River

COUNTY: Mendocino

WHEREAS:

1. On April 9, 2012, Martin Schepergerdes (Applicant) filed Application A031932 with the State Water Resources Control Board (State Water Board), requesting the right to divert 7.3 acre-feet per year from an Unnamed Spring tributary to Bear Creek thence the South Fork Eel River in Mendocino County.
2. On June 7, 2012, the State Water Board issued public notice of Application A031932. Ten protests to Application A031932 were received and accepted by the State Water Board.
3. On April 25, 2013, the Applicant's Agent telephoned State Water Board staff and stated that he was having trouble finding any consultants willing to work on the protest resolution tasks required to continue with Application A031932.
4. On September 25, 2013, per the Applicant's request, State Water Board staff agreed to hold Application A031932 in abeyance for an unspecified period of time while the Applicant continued trying to locate a consultant willing to work on the project.
5. By letter dated September 8, 2016, pursuant to Water Code section 1334, the State Water Board requested that the Applicant submit confirmation of interest in continuing with Application A031932 and a description of any progress made regarding negotiations with the protestants to Application A031932. The Applicant failed to provide the information requested by the State Water Board within the time period provided.
6. Water Code section 1335 provides that the State Water Board may cancel an application for failure to provide information requested by the State Water Board.
7. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated the authority to administer the State Water Board's water rights program. The Deputy Director for Water Rights has redelegated this authority pursuant to a memorandum dated July 6, 2012.

THEREFORE, IT IS ORDERED THAT APPLICATION A031932 IS HEREBY CANCELED.

It is the Applicant's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this cancellation is not diverted and used. The Applicant is hereby put on notice that unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point of diversion identified in this application may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Before initiating any work in a stream channel, the Applicant should consult with the California Department of Fish and Wildlife and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. The Applicant must also consult with the Department of Water Resources, Division of Safety of Dams, if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

The Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use (Statement) be filed for these diversions. Water Code section 5107, subdivision (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY: JOHN O'HAGAN FOR:

*Leslie F. Grober, Deputy Director
Division of Water Rights*

Dated: JUL 27 2017